

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

UNITED STATES OF AMERICA :
 :
vs. : No. SA:18-CR-00603
 : San Antonio, Texas
BRADLEY LANE CROFT(1), : November 6, 2019
Defendant. :

TRANSCRIPT OF BENCH TRIAL VERDICT (Volume 7)
BEFORE THE HONORABLE DAVID A. EZRA
SENIOR UNITED STATES DISTRICT JUDGE

APPEARANCES:

FOR THE GOVERNMENT:

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computer-aided transcription.

1 *(Wednesday, November 6, 2019, 1:33 p.m.)*

2 * * *

3 COURT SECURITY OFFICER: All rise.

4 COURTROOM DEPUTY CLERK: SA:18-CR-00603, United States
5 of America versus Bradley Lane Croft.

6 MR. SUROVIC: Greg Surovic and Fidel Esparza for the
7 United States, Your Honor, present and ready.

8 MR. MCHUGH: Good afternoon, Your Honor. Tom McHugh
9 and Will Brooks and the defendant. We are present, we are
10 ready.

11 THE COURT: Thank you very much. Just one
12 housekeeping matter I need to make again clear on the record.
13 The federal rules do provide that this Court should submit with
14 a verdict in the case in which the judge has tried the case
15 both as judge and jury, in other words a jury-waived trial in a
16 criminal matter, a felony case, unless all counsel and the
17 defendant specifically waive the Court doing so and in this
18 case that has, in fact, happened and I would ask that that be
19 placed on the record yet again. Mr. Surovic?

20 MR. SUROVIC: We have no objection, Your Honor.

21 THE COURT: Well, no, it's not no objection. You
22 either agree or you disagree.

23 MR. SUROVIC: I correct myself, Your Honor. We agree.

24 MR. MCHUGH: Your Honor, Tom McHugh representing
25 defendant Croft here. He and I have visited before and we just

1 visited now regarding that. We both agree.

2 THE DEFENDANT: I agree.

3 THE COURT: You agree with that?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: All right. Now, let me say this, that
6 this Court takes very seriously its responsibility to review
7 the evidence and to hold the government to its burden of proof
8 which is, in a criminal case under the Constitution and the
9 laws of this country, beyond a reasonable doubt. It is not
10 often that a defendant will waive a jury in a criminal matter.
11 I have had it done because of my many years on the bench, 31
12 plus now, only a handful of times. I know many judges who have
13 30 or more years of service and have never had a criminal
14 defendant waive a jury. And so it makes it even more important
15 that the Court do this in a manner and mode in which the Court
16 feels comfortable that it has reviewed each and every aspect of
17 the case. And this is what took the Court some time. I didn't
18 issue a verdict immediately after trial, but rather took the
19 time to wait for the arguments and then reviewed everything
20 that was presented. And did so in a dispassionate manner and
21 very carefully. Having done so, would you prefer that I read
22 each count or would you prefer that I just simply announce the
23 Court's verdict as to every count? I can read each count.

24 THE DEFENDANT: I'd rather just hear it.

25 THE COURT: Well, the Court is going to read each

1 count then. Having heard the testimony in the above case and
2 reviewed the admitted exhibits as well as having considered the
3 arguments of the parties, the Court enters the following
4 verdict; as to count one, guilty; as to count two, guilty; as
5 to count three, guilty; as to count four, guilty; as to count
6 five, guilty; as to count six, guilty; as to count seven,
7 guilty; as to count eight, guilty; as to count nine, guilty; as
8 to count ten, guilty; as to count eleven, guilty; as to count
9 12, guilty; as to count 13, guilty; as to count 14, guilty; as
10 to count 15, guilty; and as to count 16, guilty.

11 Signed by myself as a United States District Judge
12 here in the San Antonio Division, November 6th, 2019.

13 This Court hereby directs and orders the verdict to be
14 filed and spread upon the records of the United States District
15 Court for the Western District of Texas. Mr. Surovic.

16 MR. SUROVIC: Your Honor, at this time I believe there
17 is a forfeiture portion of the case. The defendant has agreed
18 to submit that to the Court as well.

19 THE COURT: Yes, the forfeiture is going to be --
20 because the Court finds the defendant guilty on all counts, the
21 forfeiture is going to be granted.

22 MR. SUROVIC: Thank you, Your Honor. We will file the
23 appropriate paperwork on that.

24 THE COURT: Yes, that can be submitted to the Court.

25 MR. SUROVIC: In addition, Your Honor, at this time

1 the government would move to take the defendant into custody
2 since he is now a convicted individual.

3 MR. MCHUGH: Your Honor, respectfully, the defendant
4 respects this Court's role in this proceeding. In regard to
5 the matter of bond, he has been under house arrest since August
6 of 2018. I don't believe he's a risk of flight. I don't
7 believe he's had any issues or violations. I know that
8 Probation is going to prepare a presentence investigation
9 report. I know that this Court, as all parties, will seriously
10 consider that and address that. I would ask this Court to not
11 take the defendant into custody, respectfully.

12 THE COURT: Mr. Surovic, you know, it generally is not
13 my practice to take a defendant into custody in a case in which
14 they have been out and have complied, and you usually don't ask
15 for that. I'm asking what is different here? Is there a
16 reason why you believe that he needs to be taken into custody?

17 MR. SUROVIC: There are, Your Honor. As the Court may
18 or may not know, we argued for his detention in the original
19 instance.

20 THE COURT: Right.

21 MR. SUROVIC: He was originally considered for bond
22 and it was determined that because of conditions laid out to
23 the Magistrate Judge, that maybe house arrest was more
24 appropriate in this instance. We were concerned about the
25 possibility he might harass witnesses. Two of the witnesses

1 that testified in this court have indicated that they have
2 personal concerns about their safety. This has been heightened
3 for the government at least in the last two months. We
4 received word from Mr. Cook and the FBI investigated a series
5 of photographs that he was sent as texts on his phone. They
6 were essentially photographs of decapitated heads and gory
7 pictures from -- it appeared to be slayings in Mexico. There
8 was no reason why he would receive anything like that except
9 for the fact that this case is pending. The FBI attempted to
10 do a detailed investigation of those photos and it ended up
11 coming back to a dead stop in Chicago, a company that basically
12 allows you to send things anonymously and they were never able
13 to get beyond that to make a determination, so I wasn't able to
14 approach the Court and request that his bond be revoked at that
15 point because I didn't have evidence that he had done
16 something.

17 Now where the burden has shifted, where the
18 presumption prior to conviction is that he should be allowed to
19 remain on bond, now the presumption is he should be in custody
20 unless there's clear and convincing evidence that he's not a
21 risk of flight and danger to the community. We would submit
22 that given those facts, the fear of two of the witnesses in the
23 case and that unusual text, that this is one of those instances
24 where he should be taken into custody.

25 THE COURT: Well, I'm not going to tag the defendant

1 with something that is or is not his doing. I mean, we don't
2 know. I mean, this fellow received these texts. Was it just
3 one of them or just him, right?

4 MR. SUROVIC: It was a very short -- it was all --

5 THE COURT: But it was just him, there was no other --

6 MR. SUROVIC: It was just to Mr. Cook, that's correct.

7 THE COURT: Had it been several witnesses, then the
8 Court would be more inclined to believe there was a connection.
9 But we don't know what else is going on in Mr. Cook's life that
10 would have potentially caused that to happen and I certainly
11 don't believe in putting somebody in detention solely and only
12 because there is a bad or unfortunate text that has been
13 received by somebody, but we don't know from whom.

14 On the other hand, the defendant has been charged with
15 a number -- and convicted now of a number of rather serious
16 offenses and I am not entirely comfortable that the defendant
17 would at this point -- he has a somewhat transient life-style,
18 he's living in a trailer there and even though it's a pretty
19 luxurious one, I think it's on four wheels or it was, I think
20 that's been seized now.

21 MR. SUROVIC: It has, Your Honor. It will be subject
22 to forfeiture.

23 THE COURT: But he doesn't have a permanent abode
24 which he owns.

25 MR. MCHUGH: Your Honor, respectfully, he has a

1 permanent abode.

2 THE COURT: Where is that?

3 MR. MCHUGH: And that's on Tradesman Drive in San
4 Antonio where the dog school is.

5 THE COURT: I thought he was living in a kind of a
6 shack or something there.

7 MR. MCHUGH: Yeah, he's living in a trailer on those
8 premises.

9 THE COURT: That's what I thought.

10 MR. MCHUGH: But there has been no history, there has
11 been no suggestion, he is a single parent, that he would ever
12 consider fleeing the jurisdiction of this Court.

13 THE COURT: Well, you know, I've had that argument
14 made to me. I've had the opposite argument made to me by
15 yourself in other cases, as you know, many times. And the
16 problem is you don't know until it happens. And when it
17 happens, it happens. As a matter of fact, I had a hearing this
18 morning where one of the Magistrates let a defendant out, was
19 convinced that the defendant would appear and they're still
20 looking for the defendant. Defendant has not appeared, he
21 absconded. I'm not tagging this defendant with that situation.
22 That's an entirely different situation, but just because
23 somebody says they're going to be there, I presume he told the
24 Magistrate he was going to be there too, that guy, and I've had
25 a few others in my career who haven't shown up. I'll tell you

1 what I am going to do. I am going to order the defendant into
2 custody at this time. However, however, I will at such a time
3 as counsel deems it feasible hear a motion by counsel to
4 release him on certain restrictive conditions. You can file
5 that motion and then Mr. Surovic will have an opportunity to
6 address it and then we'll take another look at it at that time,
7 but I think at this time it's appropriate, particularly given
8 the unhappiness of the verdict obviously, that we don't want
9 anybody doing anything rash, so I am going to direct him into
10 custody today and then counsel can file an appropriate motion.

11 MR. MCHUGH: Thank you, Your Honor.

12 THE COURT: And then I'll look at it seriously.
13 Counsel knows me well enough to know that I will, on both
14 sides. I do want to thank counsel for their very difficult
15 case obviously and it's always difficult. I mean I don't think
16 the lawyers here in their own careers have argued a criminal
17 case to a judge often and it's always difficult to do.
18 Fortunately I know both counsel very well, they are highly
19 trained and extremely professional and excellent lawyers on
20 both sides. And so I appreciate it very much the courtesies
21 that the Court received during this trial and the
22 professionalism of both counsel.

23 I want to say to defense counsel, it's never a good
24 thing, you don't want to get a verdict that you had not hoped
25 you would be received, although I'm sure, knowing defense

1 counsel well, this couldn't be a complete shock. But let me
2 say this, I thought you did an excellent job for your client.
3 You were vigorous in your defense, you were assertive in your
4 defense, your legal arguments and your professionalism were
5 outstanding here. No one could have done a better job for your
6 client than you did. There's no question in my mind and I have
7 tried I don't know how many trials before how many lawyers and
8 some of the most illustrious lawyers that have ever practiced
9 in this country have been in my court and it could not have
10 been better tried for the defendant than you did.

11 Years and years ago, a great prosecutor, former
12 Watergate special counsel, Leon Jaworski, who had a
13 relationship at St. Mary's and was there when I was there as an
14 adjunct, told us that "A good lawyer works with the facts, a
15 bad lawyer tries to change the facts."

16 And there was no bad lawyering here. There was good
17 lawyering here. You can't change the facts. The facts spoke
18 for themselves in this case and even looking at them as
19 critically as I did, and each and every time I did I came back
20 to the same conclusion, that the evidence established the
21 defendant's guilt beyond a reasonable doubt.

22 All right, if there's nothing else, then the Court --
23 anything else, Mr. Surovic?

24 MR. SUROVIC: Not from the government, Your Honor.

25 THE COURT: Anything else, counsel?

1 MR. MCHUGH: Not at this time.

2 THE COURT: The Court stands in recess.

3 COURT SECURITY OFFICER: All rise.

4 THE COURT: Before you put the cuffs on him, let --

5 THE DEFENDANT: Can I give her a hug?

6 THE COURT: Yes.

7 (1:49 p.m.)

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UNITED STATES DISTRICT COURT

WESTERN DISTRICT OF TEXAS

I certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter. I further certify that the transcript fees and format comply with those prescribed by the Court and the Judicial Conference of the United States.

Date signed: May 14, 2020

/s/ Angela M. Hailey

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